

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Fairchild's Publications	:	
Division Capital Cities Media, Inc.	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Corporation	:	
Franchise Tax under Article 9A of the Tax Law for	:	
the Years 1972-1975.	:	

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Fairchild's Publications, Division Capital Cities Media, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Fairchild's Publications  
Division Capital Cities Media, Inc.  
485 Madison Avenue  
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
15th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Fairchild's Publications	:	
Division Capital Cities Media, Inc.	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Corporation	:	
Franchise Tax under Article 9A of the Tax Law for	:	
the Years 1972-1975.	:	

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of July, 1983, she served the within notice of Decision by certified mail upon Landis Olesker the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Landis Olesker  
Hall, Dickler, Lawler, Kent & Howley  
460 Park Ave.  
New York, NY 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
15th day of July, 1983.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

July 15, 1983

Fairchild's Publications  
Division Capital Cities Media, Inc.  
485 Madison Avenue  
New York, NY 10022

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Landis Olesker  
Hall, Dickler, Lawler, Kent & Howley  
460 Park Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
FAIRCHILD PUBLICATIONS DIVISION,	:	DECISION
CAPITAL CITIES MEDIA, INC.	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Years 1972	:	
through 1975.	:	

Petitioner, Fairchild Publications Division, Capital Cities Media, Inc., 485 Madison Avenue, New York, New York 10022, filed petitions for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the years 1972 through 1975 (File No. 24398).

Petitioner, by its duly authorized representative, has waived a formal hearing and submitted its case for decision by the State Tax Commission based on the file. After due consideration, the Commission renders the following decision.

ISSUE

Whether receipts earned by petitioner from advertising contracts during the years 1972 through 1975 were allocable entirely to New York, or rather were allocable to New York only to the extent of the ratio established by comparing sales of newspapers in New York to total sales.

FINDINGS OF FACT

1. Petitioner, Fairchild Publications Division, Capital Cities Media, Inc. (formerly Fairchild Publications, Inc., and referred to hereinafter as "Fairchild"), timely filed New York State Corporation Franchise Tax Reports

(Forms CT-3) for each of the years 1972 through 1975, on which its principal business activity was listed as publishing.

2. On January 13, 1976, Fairchild filed amended Forms CT-3 for each of the years 1972 through 1974, attached to which were claims for credit or refund of tax paid (Forms CT-8) in the amounts of \$72,597.00 for 1972, \$73,407.00 for 1973 and \$100,575.00 for 1974.

3. Fairchild indicated on its claims for credit or refund that the recomputation of its tax per the amended returns was the result of a change in the numerator of the receipts factor used in the calculation of petitioner's business allocation percentage (total New York receipts divided by total receipts from everywhere). The Forms CT-8 filed by petitioner further specified as follows:

"[r]eceipts from advertising constitute 'other business receipts' which, pursuant to Section 210.3(a)(2)(d) of the Tax Law, are included in the numerator to the extent they are earned within the State. Revenues from advertising have been reallocated to reflect the situs of the subscribers. The primary purpose of the advertiser is to reach the market in which the publication circulates. The publisher, in turn, guarantees a particular circulation market, this market's demographics determine advertising revenue. The situs of this market is clearly the place in which the income is earned."

4. On April 25, 1977, the Audit Division issued to Fairchild a Statement of Audit Adjustment pertaining to 1975, advising Fairchild of a proposed deficiency in the amount of \$120,342.00 for 1975. Fairchild paid this amount, together with interest of \$11,357.88. Fairchild thereafter filed a claim for credit or refund of this total amount paid (\$131,699.88), and stated the basis for its claim as follows:

"[o]ur payment of the tax plus interest per your Notice of Deficiency dated June 6, 1977 was in error. Receipts from advertising contracts constitute other business receipts in accordance with Section 210.3(a)(2)(D) and are included in the numerator of the receipts factor of the allocation formula in the same ratio as the sales of the newspapers in New York bear to the total sales."

5. By letters dated November 5, 1976 and November 16, 1978, the Audit Division advised Fairchild that its claims for credit or refund for each of the years 1972 through 1975 were denied.

6. Fairchild filed petitions protesting the above denials of its claims for credit or refund, repeating thereon the statement contained in its 1975 claim (see Finding of Fact "4") as the basis of its protest for each of the years at issue.

7. The Audit Division, by its answers to the petitions, agrees that receipts from the advertising contracts constitute other business receipts under Section 210.3(a)(2)(D), but however, asserts that these receipts are received from the advertisers rather than from the readers (of the newspapers) and are therefore earned in New York.

8. There was no evidence contained in the file or otherwise presented by petitioner with respect to how and where the contracts giving rise to the advertising receipts were negotiated, or how and where the advertiser's requirements under the contracts were handled.

#### CONCLUSIONS OF LAW

A. That section 210.3(a) of the Tax Law provides for the allocation to New York of the corporate taxpayer's business income by means of a business allocation percentage consisting of the average of three (3) factors; (1) real and tangible personal property, (2) receipts and (3) wages.

B. That during the years at issue herein, section 210.3(a)(2) of the Tax Law provided that the receipts factor was to be determined by:

"(2) ascertaining the percentage which the receipts of the taxpayer,..., arising during such period from

- (A) sales of its tangible personal property where shipments are made to points within this state,
- (B) services performed within the state,
- (C) rentals from property situated, and royalties from the use of patents or copyrights within the state, and
- (D) all other business receipts earned within the state, bear to the total amount of the taxpayer's receipts, similarly computed, arising during such period from all sales of its tangible personal property, service, rentals, royalties and all other business transactions, whether within or without the state;"

C. That section 210.3(a) of the Tax Law was amended by L. 1981, Ch. 103, section (1), subparagraph (2), clause (B) to read as follows:

"(B) services performed within the state, provided, however, that in the case of a taxpayer engaged in the business of publishing newspapers or periodicals, receipts arising from the sales of advertising contained in such newspapers and periodicals shall be attributable only to the extent that such newspapers and periodicals are delivered to points within the state,".

This amendment to section 210.3(a)(2)(B) was made applicable to taxable years beginning or or after January 1, 1982, and is not retroactive to prior years.


D. That the receipts from the advertising contracts constituted other business receipts in accordance with section 210.3(a)(2)(D) of the Tax Law. The petitioner has provided no evidence to show that the contracts were negotiated or handled anywhere other than in New York. Accordingly, said receipts earned during the years at issue were allocable to New York (see Conde Nast Pub. v. Tax Comm., 51 A.D.2d 17, mot. for lv. to app. den. 39 N.Y.2d 842).

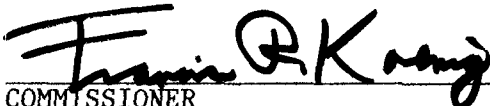
E. That the petitions of Fairchild Publications Division, Capital Cities Media, Inc. are hereby denied and the Audit Division's denials of petitioner's claims for credit or refund are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 15 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER